

**FEDERAL LEADERSHIP FORUM
PRINCIPLES OF COOPERATING AGENCY INTERACTION
November 28, 2005**

“Cooperating agency” means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. . . . A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency. (40 CFR 1508.5)

The following list of principles relate to the interaction between Lead Agency and Cooperating Agencies, to encourage more effective Lead Agency-Cooperating Agency relationships. This document was developed by the Rocky Mountain Federal Leadership Forum (FLF) to provide suggested principles of cooperation under the official program of Cooperating Agencies as provided for in the CEQ Regulations (40 CFR 1508.5). The goal of the document is to provide principles under which the agencies of the FLF can share mutual understanding concerning their interaction with Federal, State and local agencies in the official status of “Cooperating Agencies”. The suggestions provided were developed in the context of effective and efficient oil and gas NEPA procedures, but apply equally well across agency NEPA activities.

Effective Cooperating Agency Efforts

The foundation of cooperating agency interaction is collaboration, which is established, developed, and maintained by communication, coordination, and cooperation.

Cooperating Agency (CA) status is only one aspect of broader public involvement and other outreach efforts. There are additional mechanisms/venues for promoting collaboration without establishing formal CA status.

All participants need to understand the distinction between NEPA adequacy versus decision issues—the goal of the CA process is to make sure there is a good NEPA document.

Process Steps

Lead Agencies are responsible for EIS preparation. Lead Agencies have Decision authority for EIS content and proposed action. Lead Agencies should:-

- **Request in writing all Federal, state and local governments and Indian Tribes, with jurisdiction or special expertise concerning the area of the project, plan or proposal, to become a cooperating agency.**

- **Request the participation of each cooperating agency in the NEPA process at the earliest possible time. (40 CFR 1501.6(a)(1)~~s~~) Identify and affirmatively contact potential CAs no later than the initiation of the scoping process.**
- **Invite CA participation on EAs where there is controversy or a complicated project/proposal.**
- **Cooperatively develop and execute CA written agreements clearly setting forth information to be provided and time frames for review/comment. Process discussions should make clear when and how the cooperating agencies are expected to participate, and the lead agency should insure that the cooperating agency representatives understand their roles and responsibilities.**
- **Establish reasonable time frames for CA input and document review.**
- **Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency. (40 CFR 1501.6(a)(2)) Engage CAs in identification of issues and explore the range of decisions (what is possible), including mitigation.**
- **Ensure CAs have the opportunity to review and comment on the PDEIS and associated documents as they are developed.**
- **Promote strong interaction between the ID team leader and CAs. The team leader should play a coordinating role with CAs, facilitate open discussion, and take advantage of opportunities to communicate with CAs in multiple ways to keep everyone informed.**
- **Seek to resolve conflicting/inconsistent scientific data in cooperation with CAs.**
- **Avoid “surprises”. Identify emerging issues and provide early warning.**
- **Recognize where/when in NEPA process dispute resolution would be most beneficial. (Dispute resolution between the draft and final Environmental Impact Statement (EIS) is the least effective point because time is needed before the draft to work out issues.)**
- **Identify and seek resolution of disputes as early as possible and at the lowest possible level. Elevate up the chain of command only after attempts to resolve at the staff level have been unsuccessful and disagreements between agencies have been clearly articulated.**

- **Resolve issues directly with CA and other involved agencies, not in public forums.**
- **Consider using trained facilitators and consulting with the CAs in selecting the facilitator. Facilitators help the process move forward, assuring that schedules are followed and that conclusions are reached concerning questions, issues, or concerns of the group.**

Cooperating Agencies are non-lead agencies with jurisdiction by law or special expertise. They provide assistance to the lead agency in preparation of the EIS. Their decision authority is limited to matters within their jurisdiction by law. Cooperating Agencies should:

- **Help to ensure that the NEPA process fully addresses CA concerns, issues, and environmental impacts. The goal is that the CA will have all of their issues addressed during the NEPA process with the goal of a fully adequate NEPA document.**
- **Seek to obtain CA status, if desired and not already invited, during the Scoping period.**
- **Participate in the NEPA process at the earliest possible time. (*40 CFR 1501.6(b)(1)*) Participate fully in scoping, PDEIS, and associated document review. Provide input and comments in accordance with agreed-upon schedule.**
- **Provide input on preparation plan; identify coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; sponsor public forums with lead agency; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.**
- **Collaborate with lead agency in evaluating alternatives and in developing criteria for selecting the preferred alternative.**
- **Upon lead agency request, and where resources permit, assume responsibility for developing information and preparing environmental analyses including portions of the EIS within their area of special expertise. (*40 CFR 1501.6(b)(3)*) Provide effects analysis within CA's expertise; identify direct, indirect and cumulative effects within CA's expertise; suggest mitigation measures for adverse effects.**
- **Seek to resolve conflicting/inconsistent scientific data in cooperation with Lead Agencies.**

- **Avoid “surprises”. Identify emerging issues and provide early warning.**
- **Identify and seek resolution of disputes as early as possible and at the lowest possible level. Elevate up the chain of command only after attempts to resolve at the staff level have been unsuccessful and disagreements between agencies have been clearly articulated.**
- **Resolve issues directly with Lead agencies, not in public forums.**
- **Review DEIS, provide comments within CA’s expertise, and assist in preparing responses.**

Memorandum of Understanding

- **If the agencies respond affirmatively that they wish to become a cooperating agency, the lead agency should develop draft MOUs in cooperation with each of the cooperating agencies.**
- **The MOUs should be clear and complete in explaining the process, the roles and responsibilities, listing the representatives for each of the parties and detail the scheduling of the project or process. A dispute resolution process should also be included.**
- **MOUs should be reviewed for legal sufficiency by the attorneys representing the agencies involved. In the case of the State, the Attorney General’s Office, in the case of counties or conservation districts, their local legal counsel and for the Federal Agencies, Solicitor/Regional Counsel offices should review the content. Once MOUs between agencies become routine, legal review may not be necessary.**
- **Include a Communication Plan with the MOU.**
- **The MOU keeps everyone on track, clarifies understanding. An MOU helps ensure consistency when there are personnel changes (especially with long-term projects)**

Training for Entities Serving as CA

- **Timely training for Cooperating Agency representatives is paramount. Be sure that all representatives that may be involved in the process are provided training and when the representatives change, that training is provided for replacements.**

- **Training should include descriptions of steps in the process and where the Cooperating Agencies will be involved, as well as what will be expected of them in manpower, time, funding and expertise. The training should also include discussions of who may appropriately represent the CAs. It should also be understood by all parties that this interaction is manpower intensive and costly to the participants.**
- **Training should include other topics such as the authorities from which the cooperating agency status originates, NEPA, CEQ Regulations, FLPMA, Executive Orders, Agency Regulations and others.**
- **Training should include the defining of terms that will be shared in the process. A written glossary is desirable. Defining cooperating agency status should be part of the discussion as well as eligibility criteria and discussions of what other public participation options are available. Defining joint lead, lead agency and cooperating agency roles is also desirable.**
- **Roles of the Team Leader, editor, technical experts, program leads and special advisors should be discussed.**
- **Training should include discussions of Federal Advisory Committee Act requirements and considerations as well as what can and cannot be accommodated under the act.**
- **Training should also include content of MOUs and provide examples of various types to provide background for the MOU that will be signed between agencies.**
- **A very helpful element of training is providing other agency representatives from varying agencies to discuss their experiences with similar processes.**